IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8995 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL MAGUBEN PURSHOTTAMDAS

Versus

DISTRICT PRIMARY EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 8995 of 1999

MR AM RAVAL for Petitioner No. 1

MR D.R.DAVE with MR AD OZA for Respondent No. 1

RULE SERVED BY DS for Respondent No. 3

MR K.L.PANDYA, AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 23/09/2003

ORAL JUDGEMENT

Heard learned advocate Mr. A.M.Raval for petitioner, learned AGP Mr. K.L.Pandya appearing on

behalf of respondent No.2 and learned advocate Mr. D.R.Dave with learned advocate Mr. A.D.Oza appearing on behalf of respondent No.1. Respondent No.3 though served no appearance has been filed on his behalf.

2. The brief facts of the case are as under.

2.1 The petitioner's husband has worked in different District Schools and after serving more than 22 years he has taken voluntary retirement on 17.8.1955. The petitioner was sanctioned the family pension by office order dated 14.6.1990 by the District Primary Education Committee, Ahmedabad relying on the law laid down by the Hon'ble Court and also taking into consideration the Government Resolution dated 11.5.1989. However, the petitioner was denied the family pension vide order dated 15.4.1991 by the Director of Pension and Provident Fund Office as the husband of petitioner has expired on 24.8.1989. According to the petitioner, in Special Civil Application No. 420 of 1989 this Court has laid down a law that widows of deceased Government employees who are not covered under Family Pension Scheme, 1972 are required to be given the benefit of family pension and so petitioner is covered by the Government Resolution dated 11.5.1989 and in that case the benefit of Family Pension Scheme is extended to all eligible family members including the dependant w.e.f. 1.10.1977. According to the petitioner the District Primary Education Officer of the Education Committee passed an office order on 14.6.1990 whereby the petitioner was authorised to receive family pension from 1.8.1989 to 30.5.1990 by taking into consideration the Government Resolution dated 11.5.1989 according to which the petitioner is entitled the family pension and before passing the order, the authority has certified about the entitlement and identity of the family pensioner. According to the petitioner, her husband has voluntarily retired after serving more than 22 years without there being any stigma in his service career, so he cannot be refused the family pension and under BCSR there is a provision of compassionate pension even if the service is terminated on the ground of inefficiency, misconduct, while those who have retired voluntarily, they are denied the pension and also their family members are denied the family pension, which is violative of Articles 14 and 16 of the Constitution of India. According to the petitioner, she is entitled family pension on the basis of the Government Resolution dated 11.5.1989. Mr. Raval has submitted that the petitioner is not challenging the question of vires in the present petition.

3. Learned AGP Mr. Pandya appearing on behalf of the respondent has submitted that detailed reply has been filed by the respondent. He also submitted that on 15.4.1991 a reply has been given to the petitioner that her husband has voluntarily gave resignation on 17.8.1955 and therefore, petitioner is not entitled the family pension. Similarly, this question has been again mentioned in the reply submitted by the petitioner.

4. In light of the submissions made by both the learned advocates, now the question arise that whether a voluntary resignation which has been tendered by the husband of the petitioner is considered to be a voluntary retirement or not and on that basis the family pension is available to the petitioner or not. This question has been examined by the Apex Court in reported decision in the case of M/S J.K.COTTON SPG. & WVG. MILLS COMPANY LTD., KANPUR V. STATE OF U.P. AND OTHERS, AIR 1990 SC 1808. The relevant observations made in para 8 by the Apex Court are quoted as under:

> "In the present case the employee's request contained in the letter of resignation was accepted by the employer and that brought an end to the contract of service. The meaning of term 'resign' as found in the Shorter Oxford Dictionary includes 'retirement'. Therefore, when an employee voluntarily tenders his resignation it is an act by which he voluntarily gives up his job. We are, therefore, of the opinion that such a situation would be covered by the expression 'voluntary retirement' within the meaning of Cl. (i) of Sec.2(s) of the State Act. In Santosh Gupta's case (AIR 1980 SC 1219), Chinnappa Reddy, J. observed as under (at p. 1220 of AIR):
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> 'Voluntary retrenchment of a workman or the retrenchment of the workman on reaching the age of superannuation can hardly be described as termination, by the employer, of the service of a workman.' (Here the work 'retrenchment' has reference to 'retirement').
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> The above observation clearly supports the view which commends to us. We are, therefore, of the opinion that the High Court was not right in concluding that because the employer accepted the resignation offer voluntarily made by the employee, he terminated the service of the

employee and such termination, therefore, fell within the expression 'retrenchment' rendering him liable to compensate the employee under S. 6N. We are also of the view that this was a case of 'voluntary retirement' within the meaning of the first exception to Sec. 2(s) and therefore the question of grant of compensation under S. 6N does not arise. We, therefore, cannot allow the view of the High Court to stand."

Similarly, this question has been recently examined by the Division Bench of Delhi High Court in the case of ASHWANI KUMAR SHARMA V. ORIENTAL BANK OF COMMERCE, 2003 (2) LLJ 575. The relevant observations made in paragraphs 30, 31 and 32 are quoted as under:

"Payment of pension depends upon completion of qualifying service. A person who completes the qualifying service is entitled to pension. Whether the relationship of employer and employee comes to an end by way of resignation or voluntary retirement in a given situation may not matter so as to enable the employer to deprive the employee from the benefit of a beneficent scheme. It may be one thing to say that a scheme for payment of pension having been introduced at a stage when the concerned employee has retired, would not be entitled to the benefit thereof but it is another thing to say that although he, at all relevant times, was in service, he would be deprived therefrom only because he has either resigned or retired voluntarily. Resignation and voluntary retirement stand on slightly different footing but the effect and substance thereof is not of much significance. It may be true that an offer of voluntary retirement may be accepted or may not be accepted but such is a case of resignation also particularly when the concerned employee is faced with departmental proceedings. The employer, having accepted the resignation, even upon waiver of the notice period, cannot be permitted to turn round and contend that he was not entitled to the pensionary benefits. The respondents, as noticed from the factual backdrop of the case, themselves processed the matter for grant of pension. The petitioner was asked to make an amendment to his application for resignation to one for voluntary retirement.

Both resignation and voluntary retirement

can be withdrawn before the same take effect (See Balram Gupta v. Union of India and Another(Supra).

Retirement or resignation has also been held to be almost synonymous. In Garment Cleaning Works v. Workmen, AIR 1962 SC 673: 1961-I-LLJ-513, and Remington Rand of India Ltd. v. Workmen, AIR 1970 SC 1421 : 1969 (3) SCC 913, it has been held that qualifying period for gratuity should be different in case of retirement or resignation and in case of dismissal for misconduct. In that case also, thus, retirement or resignation has been held to be at par for the purpose of grant of retiral benefits. In the matter of gratuity, why a long minimum period for earning the same in the case of voluntary retirement or resignation has been provided, the Apex Court has answered in British Paints (India) Ltd. v. Workmen, AIR 1966 SC 732 : 1966-I-LLJ-407 as thereby the workmen may leave one concern for another after putting in the minimum service qualifying for gratuity. There again, the voluntary retirement or resignation had been held to be at par."

5. In view of the observations made by the Apex Court and the Delhi High Court, the resignation has to be considered as voluntary retirement. In reality it makes no difference between them for getting the retirement benefits by the employee. Therefore, the prayer of the petitioner has been rejected by the respondents on the ground that her husband has tendered resignation and it is not the case of voluntary retirement, therefore, benefit has been denied to the petitioner. According to my opinion such stand which has been taken by the respondents cannot be accepted and considering the observations made by the Apex Court and the Delhi High Court, petitioner is entitled the benefit of family pension according to Government Resolution dated 11.5.1989. Therefore, present petitioner is required to be allowed.

6. Learned advocate Mr. A.M.Raval has submitted that petitioner is entitled the family pension from 1989 but, last more than 12 years have passed, still the legitimate right has not been given and no due amount has been paid to the petitioner only on the ground that it is a case of resignation and not the voluntary retirement. Learned advocate Mr. Raval has also submitted that at present petitioner is aged about 80 years and therefore,

on account of delay which has occurred because of the adamant stand taken by the respondents, some reasonable interest may be awarded in favour of the petitioner so that she may get the amount with interest. As against that, learned AGP Mr. Pandya has vehemently opposed the said submission that it was an illegal contention which has been raised and therefore, no amount of interest can be paid to the petitioner on the amount of family pension which has been found due in favour of the petitioner.

7. I have considered the submissions made by both the learned advocates and considering the fact that the husband of the husband of the petitioner who died on 24.8.1989 had tendered resignation on 17.8.1955 and considering the law which has been well established by the Apex Court in the the case of M/S J.K.COTTON SPG. & WVG. MILLS COMPANY LTD., KANPUR V. STATE OF U.P. AND OTHERS, that if the resignation is tendered by any employee same may be considered to be a voluntary retirement and on that basis the employee is entitled retirement benefits which include gratuity, pension and other service benefits. This benefit has been denied by the respondents taking the stand that it is the case of resignation and not the voluntary retirement. However, considering the reply and the certificate issued by the respondent, where the case of the petitioner has been considered as voluntary retirement, but in the reply which is at page 34, the answer given is that the petitioner is not entitled for the family pension because the petitioner has tendered a voluntary resignation. However, considering this aspect, according to my opinion, when this right of the petitioner is decided by this Court then petitioner is entitled the interest at a reasonable rate from the due date and therefore, according to my opinion, petitioner is entitled 9% interest upon the due amount.

8. In result present petition is allowed with a direction to the respondents to pay the amount of family pension to the petitioner on the basis of the Government Resolution dated 11.5.1989 from the date on which the said amount is due to the petitioner with accumulated arrears with 9% interest within a period of one month from the date of receiving the copy of this order. Rule is made absolute.

(H.K.Rathod,J)
Jayanti*